IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO. 589-SB OF 1996

DECIDED ON : 28-11-2007

Beni

....Petitioner

Versus

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present: Mr.Bipan Ghai, Advocate, for the petitioner

Ms.Shalini Atri,AAG, Haryana

MAHESH GROVER, J (ORAL)

On 13-06-1993, an incident took place in which Kishan Pal lost his life. Initially, he was admitted to B.K.Hospital in Fardiabad, and thereafter moved to Safderjang Hospital in Delhi. The police who had got information while on the way to the hospital at Delhi met Raj Pal-complainant who made a statement that they were 8 brothers and his brother Kishan Pal and Brahm Chand had been residing in House No.1 B WH/29 NIT Faridabad and they were engaged in the business of dairy farming. His another brother Rajbir who was residing at Sanjay Colony in Sector 23,Faridabad had come to meet his brother Kishan Pal. On a date prior to the occurrence i.e. on 12-06-1993 at about 7-30 pm. Jagat Singh who is also engaged in the same business came to the dairy of Kishan Pal and

asked him as to why he was attracting his customers and affecting his business adversely. On the day of the occurrence, the complainant and his brother Kishan Pal milked the buffaloes and thereafter Kishan Pal went from the dairly to supply the milk at about 7AM while the complainant went for a walk. When he reached the park ,there he saw Kishan Pal who was about to take a turn in the street and then Jagat Singh, Satish, Lal Chand and Beni accused intercepted him. All the four persons were armed with lathis in their hands. Jagat Singh asked the other accused to kill Kishan Pal. Beni, the present appellant is said to have given a lathi blow on the head of Kishan Pal from behind, as a result of which, he fell down. The complainant reached his brother and raised a noise whereupon Satish-accused gave lathi blow on his person. Thereafter, the complainant snatched the lathi of Lal Chand accused and he caused injuries to the aggressors. On hearing the noise, Jai Pal and Rajbir also came to the spot and thereupon the accused are said to have run away.

Kishan Pal was taken to B.K.Hospital by Rajbir in an unconcious state. He was referred to Safderjang Hospital in Delhi but instead he was taken to Jeewan Hospital, Delhi where he died due to the injury suffered by him. The post mortem was conducted in B.K.Hospital in Faridabad where the body was brought back.

The FIR was registered and the police completed its investigative process and submitted a challan against all the four persons prima facie finding their complexity in the said offence. The trial Court before whom the matter was committed after the submission of challan, charged all of them under the provisions of Sections 302/323/34 IPC.

All the accused persons pleaded not guilty and claimed trial.

The prosecution examined 10 witnesses to bring home the guilt of the appellant.

All the accused persons denied the allegations while recording their statements under Section 313 Cr.P.C. Jagat Singh, Satish and Lal Chand took up common defence that it was a false case and Lal Chand was not present at the spot while Beni pleaded that a false case was registered and further stated that in fact, buffaloes were purchased by Jagat Singh and Rajbir from Bhulli of Kaithal and Bhulli and Sultan had come to recover the price of buffaloes on 12-06-1993 in the evening. On 12-06-1993 Rajbir came to the dairy of Jagat Singh and Jagat Singh requested him to make payment of Bhulli upon which Rajbir abused Jagat Singh and then Satish gave a slap to Rajbir who went away after hurling abuses. Sat Pal was a constable in PS Sarai Khwaja and Raj Pal etc. were waiting for Satish near the ice-cream factory which was in the way which Satish used to follow. Rajbir, Kishan Pal and Sat Pal attacked Satish with lathis when he came from the side of part of 'C' Block. He came running from the dairy and injuries were caused to him also. Jagat Singh had reached the dairy. Two injures were caused to him by the complainant party. He yielded lathi in self defence and one injury each was caused to Kishan Pal and Rajpal. With the help of Sat Pal, a false case was registered against them. It was stated that he had suffered a fracture. Satish and Jagat also suffered multiple injuries at the hands of the complainant party but no action was taken agaisnt the complainant party.

This plea of the defence was supported only the appellant

while all the three accused replied in the negative. In support of his plea, DW1-Bhulli, DW2-Dr.V.K.Aggarwal were examined and thereafter the evidence was closed.

The trial Court came to the conclusion that the appellant was guilty of having committed an offence under section 304-II IPC and sentenced him to undergo RI for 7 years vide orders dated 19-08-1996 which the subject matter of the present appeal.

Learned counsel for the appellant contended that the undisputed facts on record are that there was a quarrel between the complainant and the appellant and that only one lathi blow was given on the head of the deceased which proved to be fatal. He further contended with elaborate reference to the findings recorded by the trial Court that the appellant was not the aggressor and , in fact, the incident had taken place near the dairy of the appellant and a clear finding was returned by the trial Court that the complainant party was the aggressor. The only reason for awarding conviction to the appellant was that he exceeded his right of private defence. It was further pleaded by him that the trial Court had completely overlooked the fact that the appellant had suffered 5 injuries out of which one was a fracture of leg which turned out to be grievous. He had also suffered one head injury and Satish who also belonged to his faction and is related to him, suffered 5 injuries. Jagat Singh has suffered one injury. The deceased suffered only one injury on the head which turned out to be fatal and the complainant suffered only one injury on the head. In this view of the matter, learned counsel for the appellant contended that it cannot be said that the appellant had exceeded his right of self-defence . He was faced with an aggressive group of people. It was but natural for him to

react. On the strength of this, it was pleaded that the appellant was entitled to acquittal.

On the other hand, learned counsel for the State contended that the conviction and sentence is perfectly in order as the deceased had suffered a fatal blow on the head which according to him was largely unprovoked.

I have heard the learned counsel for the parties and have perused the record.

The trial Court while examining the evidence had clearly returned a finding that the place of occurrence is in close proximity to the dairy which is run by the appellant and further went on to hold that it was complainant and his brother-Kishan Pal who were the aggressors. It was also a conceded case that the appellant had suffered injuries at the hands of the complainant party which included a fracture. The testimony of PW9-Dr.A.K.Gupta reveals the following injuries on the person of the appellant, Satish and Jagat respectively :-

"*1. Lacerated wound 2.5x0.5 cm muscle deep on right parietal region. Bleeding was present.*

2. *Reddish contusion 20 cm x 4.0 (20.00 cm x 4.0 cm) on left scapular region of back.*
3. *Reddish contusion 20.0x4.0cm on right scapular region of back.*
4. *Diffused swelling on lateral aspect of left ankel joint, accompanied by a reddish contusion 5.0x2.0 cm on it.*
5. *Reddish contusion 1.0x2.0 cm on posterior aspect of left shoulder joint.*

x-ray examination was advised in respect of injuries Nos. 2, 3 and 4. Said injuries were kept under observation. All the injuries were said to be caused with a blunt weapon and wtihin proper duration of 24 hours."

Injuries on the person of Satish Kumar

1- Reddish contusion 15.0 cm x 2.0 cm on posterior aspect of left fore-arm in its upper third part. Movements were restricted and painful. X-ray examination was advised.

2- Diffused swelling on the left fore-arm in its lower third part accompanied by reddish contuison 2.5x2.5 cm. X-ray examination was advised.

3- Reddish contusion 8.0x2.0 cm on medial aspect of right knee.

4- Reddish contusion 8.0x5.0 cm on lateral aspect of left knee.

5- Reddish abrasion 3.0 x 2.5 cm on front of right fore-arm.

Injuries on the person of Jagat Singh

1- A reddish contusion 10.0 x 5.0 cm on palmer aspect of left hand. X-ray examination was advised.

It was stated to be caused by blunt weapon within duration of 24 hours.

Having regard to the aforesaid, the learned trial Court was required to test the plea of self -defence in the backdrop of the injuries which largely reflected the intent and threat of the aggressors. A person who is faced with a threat perception is entitled to react in order to save

himself. Whether the reaction and the consequent action taken by such a person is in excess of his right of self defence would be a matter of fact to be established and inferred from the evidence on record.

Concededly the appellant had suffered numerous injuries at the hands of his aggressors and had also suffered fracture. One lathi blow was attributed to him which proved to be fatal. In the melee which follows in a group violence where a person is subjected to extreme aggression, the reaction which follows from the victim is spontaneous and is never measured. The intent at that time is to ward off the aggressor and to preserve oneself which is a natural instinct inherent in every living being. The intention is never to cause violence but violence to offer defence by which is more of a defensive mechanism unleached as a reflex measure to preserve one's own existence. The consequent death of deceased Kishan Pal was more as a will of the Providence rather than willing and intending injury of the appellant.

In this view of the matter, it cannot be said conclusively that the appellant had exceeded his right of self-defence. Rather it has been held to the contrary to say that he was very much within his right of defence and was not liable.

This appeal is accordingly accepted and the appellant is acquitted of the charge against him.

28-11-2007 **[Mahesh Grover]**
MandeepKaur **Judge**

CIVIL WRIT PETITION 17531 OF 2007

DECIDED ON : 02-04-2008

K.S.Gill & another

....Petitioner

Versus

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA

HON'BLE MR.JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr.J.V.Yadav, Advocate, for the petitioners

Mr.Yatinder Sharma, DAG, Punjab

ASHUTOSH MOHUNTA, J (ORAL)

The petitioners joined the services of respondent No.3-College on 07-07-1969 and 09-08-1971 respectively and retired on 28-02-2003 and 31-08-2004 as Lecturers. They have prayed that directions be issued to the respondents to release their retiral dues which also inlcude leave encashment, payment of arrears on acount of revision of pay-scales with effect from 01-01-1996, payment of dues of allowances such as DA, HRA,Medical Allowance at par with the employees of the Punjab Government and other retiral dues. Learned counsel for the petitioners submits that this case is squarely covered by the decision rendered in **CWP 3583 of 2007 in K.C.Sharma versus State of Punjab & others on 17-12-2007** wherein the same issues were involved and which relates to the same college.

We have perused the impugned judgement and are of the considered opinion that this case is squarely covered by the aforementioned judgement.

In view of the above, we allow this writ petition in the same terms as that of **K.C.Sharma's case (supra)** In case the payments are not made to the petitioners in terms of the directions issued in K.C.Sharma's case, then the respondents shall be liable to pay interest @ 6% per annum to the petitioner.

[Ashutosh Mohunta]
Judge

[Kanwaljit Singh Ahluwalia]
Judge

02-04-2008

Mandeepkaur

CWP 16955 of 2007

Present: Mr.M.S.Sidhu, Advocate, for the petitioner

Mr.Jatyender Sharma, DAG, Punjab

Mr.P.K.Khurana, Advocate, for the respondent-University

Reply on behalf of respondent has been filed in Court today. The same is taken on record.

A perusal of the reply shows that the petitioner has the alternative remedy of challenging the decision of the committee by filing an appeal under Rule 20 of Part II Chapter 10 of Volume III, Calender of Guru Nanak Dev University, Amritsar before the Vice Chancellor.

As the aforementioned remedy is available to the petitioner, therefore, he may challenge in the order impugned in this case before the Vice Chancellor. The delay in filing the appeal shall be condoned in case the appeal is filed within one month from today.

Disposed of.

[Ashutosh Mohunta]
Judge

[Kanwaljit Singh Ahluwalia]
Judge

02-04-2008

Mandeepkaur

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CIVIL WRIT PETITION 16491 OF 2007

DATE OF DECISION : 02-04-2008

Sikander Singh

....Petitioner

Versus

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA

HON'BLE MR.JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr.B.S.Mittal, Advocate, for the petitioner

Mr.Yatinder Sharma, DAG, Punjab

Mr.R.S.Rai, Senior Advocate, with Ms.Meenakshi Dogra, Advocate, for respondent No.5

ASHUTOSH MOHUNTA, J (ORAL)

The petitioner has prayed that directions be issued to the respondents to release the pension, gratuity, leave encashment and other remaining retiral benefits. The petitioner retired from service of Municipal Council, Maur, Tehsil Talwandi Sabo, district Bathinda on 30-06-2007. As he has not been paid his retiral dues, hence he has filed this writ petition.

Learned counsel for respondent No.5 submits that the petitioner has been paid a sum of Rs.2,50,000 and the remaining amount would be paid to him in due course of time as the Municipal Council is going through financial crunch.

After hearing the learned counsel for the parties, we dispose of this writ petition with a direction to respondent No.5 to pay the entire retiral dues of the petitioner to him within a period of 4 months from today. In the meantime, we direct the State of Punjab to release grants to Municipal Council, Maur, expeditiously so that Municipal Council could discharge its liability towards its retired employees.

[Ashutosh Mohunta]
Judge

[Kanwaljit Singh Ahluwalia]
Judge

02-04-2008

Mandeepkaur

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CIVIL WRIT PETITION 16887 OF 2007

DATE OF DECISION : 02-04-2008

Dr.Gurmohan Singh Ahluwalia

....Petitioner

Versus

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA

HON'BLE MR.JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr.G.P.Singh, Advocate, for the petitioner

Mr.Jatyender Sharma, DAG, Punjab

Mr.Sandeep Arora, Advocate, for respondents 3 and 4

ASHUTOSH MOHUNTA, J (ORAL)

Reply has been filed on behalf of respondents 3 and 4 today in Court which is taken on record.

The petitioner has prayed that directions be issued to the respondents to pay him the gratuity, leave encashment and remaining part of provident fund ,arrears of salary of revised pay scales and corresponding increase of GPF, DA, HRA,Medical Allowance and other dues in accordance with law.

The petitioner after serving in Gujrawala Guru Nanak Khalsa College, Ludhiana,for about 37 years retired on 31-05-2007. However, he has not been granted the full retiral dues as mentioned above . Reply on behalf of respondents 3 and 4 has been filed and it has been averred that the petitioner has been paid the entire gratuity. It is further

averred that as far as payment of other retiral dues is concerned as the College is a privately aided college to the extent of 95% , hence as long as the State of Punjab does not release grants to them, they are unable to pay to the petitioner.

After hearing the learned counsel for the parties, we are of the considered view that as far as an employee is concerned, he is to be paid his retiral dues of the College who may claim the amount paid to the employee from the State Government. Reliance in this regard is placed upon **K.C.Sharma versus State of Punjab & others decided on 17-12-2007 in CWP 3583 of 2007** which squarely covers the controversy involved in the present case.

In view of the above, we allow this petition in the same terms as in **K.C.Sharma's case (supra)**.

[Ashutosh Mohunta]
Judge

[Kanwaljit Singh Ahluwalia]
Judge

02-04-2008

Mandeepkaur

IN THE PUNJAB & HARYANA HIGH COURT CHANDIGARH

CRIMINAL MISC NO. 9672-M OF 2008

DECIDED ON : 15-04-2008

Sanjay Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Gupta, Advocate, for the petitioner

RAJESH BINDAL, J (ORAL)

The allegation against the petitioner is that he used unfair means in the examination of secondary education conducted by the National Institute of Open Schooling. He permitted someone else to appear on his behalf to take the examination. Learned counsel for the petitioner submits that Surinder Kumar who had appeared in place of the petitioner in the examination has already been granted regular bail.

Considering the allegations against the petitioner that he had engaged someone else to appear in the examination on his behalf, I do not consider it to be a fit case for the grant of pre-arrest bail.

This petition is dismissed.

15-04-2008 **[Rajesh Bindal]**
MandeepKaur **Judge**

Crl Misc 48537-M of 2007

Mr.Navneet Chhokar, Advocate, for the petitioners

Mr.Vikas Chaudhary, AAG, Haryana

Heard learned counsel for the parties.

On the last date of hearing, it was not disputed that offence under Section 452 IPC only was non-bailable. Accordingly, the petitioners were directed to appear before the Investigating Officer and if they did so, the arrest was ordered to be stayed.

Learned counsel for the State has referred to the order dated 03-10-2007 passed by the learned Additional Sessions Judge and submitted that it has been held therein that the accused-applicants in furtherance of their common intention caused grievous injuries which attracted the provisions of Section 326 IPC. The injury was caused after committing house trespassing.

Learned counsel for the petitioner has submitted that section 326 IPC is not made out and it is a bonafide mistake which has been recorded in the order of the learned Additional Sessions Judge.

Learned counsel for the State has referred to the medical opinion in respect of the injured Hakam who has received injury on his ear with a *farsa*. The same is attributed to Rehman-petitioner No.5. It is submitted that it has been opined that the injury is grievous to life rather than dangerous to life. A reference has also been made to zimni No.7 dated 30-08-2007 wherein the offence under Section 326 IPC has been added.

Learned counsel for the petitioner, however, is resolute that in the police papers, the, offence under Section 326 IPC has not been

mentioned. He has referred to the head note of the order dated 01-08-2007 (Annexure P-2) to contend that section 326 IPC is not mentioned in the head note. Besides, he has referred to the report submitted on 19-09-2007 and has submitted that section 326 IPC is not mentioned in the head note.

A perusal of the said report, however, shows that it has been filed along with the remand papers and it is mentioned therein that *farsa* with which injury on the ear of Hakam Singh was caused, is to be recovered. Besides it is mentioned that Nisar and Hakam produced x-ray reports which were obtained from Delhi. After obtaining information of doctor, Section 326 IPC has also been made out. Therefore, it is evident that the role attributed to the petitioners is not only under Section 452 IPC but is also that under Section 326 IPC. It is on account of the injury caused by Rehman-petitioner No.5 on the person of Hakam on his ear that the offence under Section 326 IPC has been added.

Learned counsel for the petitioner at this stage has referred to another report wherein some information was sought on 10-09-2007. It is submitted that in the head note of the said application, offence under Section 326 IPC has not been mentioned.

It may be noticed that in the order dated 03-10-2007 passed by the learned Sessions Judge, it is clearly mentioned that the accused-applicants in furtherance of their common intention caused grievous injury which attracted the provisions of section 326 IPC. The zimni dated 30-08-2007 shows the addition of the offence under section 326 IPC.

Learned counsel then submits that at the most, Rehman-petitioner No.5 may not be entitled to the grant of anticipatory bail.

After going through the record , it may be noticed that all the

accused are alleged to have entered the house of the complainant and caused injuries. Ismail-petitioner No.1,Ibrahim-petitioner No.2,Tofiq-petitioner No.3,Abdul-petitioner No.4 were all carrying *lathis* in their hands and came to the house of Hakam and Nasir. Rehman-petitioner No.5 who was holding a *farsa*, gave the blow on the ear of Hakam which started bleeding. Thereafter, Ismail-petitioner No.1 holding a lathi, hit on the left land of Farukh, Ibrahim-petitioner No.2 gave slaps and fist blows. Abdul-petitioner No.4 caught Nisar and threw him down. All this happened in the house of the complainant.

In the circumstances, no ground for anticipatory bail is made out.

Criminal Miscellaneous Petition is accordingly dismissed.

26-11-2007 **[S.S.Saron]**
MandeepKaur **Judge**

CWP 7008 of 2008

Present: Mr.A.P.Bhandari, Advocate, for the petitioner

Mr.Anil Malhotra, Advocate, for respondent No.1

Ms.Alka Chatrath, Advocate, for respondent No.2

The petitioner has prayed that directions be issued to the respondents to add internal assessment numbers of the petitioner for B.Sc. Course for the session April, 2007 as the same have not been included in the result card of the petitioner. Internal assessment of the petitioner for B.Sc.II was submitted by respondent No.2-College wherein he was given zero marks in all the papers. The University obviously was of the opinion that there has been some mistake on the part of respondent No.2 in giving zero marks to the petitioner in the internal assessment. Even respondent No.2 realised that some mistake has been committed. Hence, the College wrote to the University that as per the internal assessment of the petitioner, the petitioner has got the following marks :-

Chemistry	12
Maths	12
Physics	7
English	8

Necessary corrections were made while computing the internal assessment of the petitioner. Thereafter, after a lot of deliberations between the University and the College, the University has agreed that the petitioner has secured the aforementioned marks. However, the learned counsel for the University submits that rules do not provide for change of the internal assessment of the petitioner at such a belated stage. In this regard, reference

has been made to para 27 (ii)(iii) of the Senate proceedings decision dated 04-09-2005.

After hearing the learned counsel for the parties, it is clear that the mistake was on the part of respondent No.2 in conveying wrong marks of the petitioner with regard to his internal assessment. The petitioner has secured 39 marks in the subjects of chemistry, maths, physics and english whereas the College informed the University that he had secured zero marks.

In view of the fact that mistake was on the part of the College and not on the part of the petitioner, therefore, we direct respondent No.1-University to give the benefit of the internal assessment to the petitioner and give him the corrected mark sheet.

Copy of the order be given dasti.

In view of the above, this petition is allowed.

[Ashutosh Mohunta]
Judge

13-05-2008 **[T.P.S.Mann]**
MandeepKaur **Judge**

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL W. P. NO.389 OF 2008

DECIDED ON : 08-05-08

Kuldeep Singh

....Petitioners

Versus

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Hemender Goswami, Advocate, for the petitioner

Mr.A.S.Brar, DAG, Punjab

Mr.Vikram Singh, Advocate, for the complainant

RAJESH BINDAL, J (ORAL)

As per directions of this Court, Karamjit Kaur, the alleged detenue is present in Court in person. She states that she is living with her parents of her own free will and has not been kept by them in illegal custody.

In view of the statement made by the complainant, learned counsel for the petitioner wishes to withdraw this petition in order to enable him to avail alternative remedy available to him under law.

Dismissed as withdrawn with liberty as prayed for.

08-05-2008 **[Rajesh Bindal]**
MandeepKaur **Judge**

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL MISC M-4111 OF 2008

DECIDED ON : 08-05-08

Raj Devi

....Petitioner

Versus

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Deepak Arora, Advocate, for the petitioner

Mr.J.S.Bhullar, AAG, Punjab

RAJESH BINDAL, J (ORAL)

Learned counsel for the petitioner submits that he may be permitted to withdraw this petition as there are certain typographical errors, with liberty to file a fresh one on the same cause of action.

Dismissed as withdrawn with liberty as prayed for.

08-05-2008 **[Rajesh Bindal]**
MandeepKaur **Judge**

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRIMINAL MISC 37056-M OF 2003

DECIDED ON : 08-05-08

Jagsir Singh & another

....Petitioners

Versus

State of Punjab & others

....Respondents

CORAM : HON'BLE MR.JUSTICE RAJESH BINDAL

Present: None for the petitioners

Mr.J.S.Bhullar, AAG, Punjab

RAJESH BINDAL, J (ORAL)

Learned counsel for the State submits that the petitioners in the present case have been acquitted on 03-02-2007.

Accordingly, the present petition is dismissed as infructuous.

08-05-2008 **[Rajesh Bindal]**
MandeepKaur **Judge**

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRL MISC 50508-M OF 2007

DECIDED ON : 08-05-08

Suman Sharma

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Deepak Nayyar, Advocate, for the petitioner

Mr.A.S.Brar, DAG, Punjab

RAJESH BINDAL, J (ORAL)

Learned counsel for the petitioner submits that the petitioner in the present case has been falsely implicated for the reasons that her husband may be involved in the case otherwise her husband had left the matrimonial home in the year 2001. If he had dealt with complainant party for sending them to abroad, she has no concern with that. She is living with her two minor children. Affidavit to the effect that whereabouts of her husband are not known since 2001 and also that he does not own any property, has already been filed with the police. The petitioner was declared proclaimed offender as the petitioner was not in the knowledge of the proceedings against her.

Petitioner is directed to appear before the Courts below on or before 15-05-2008 and submit her bail bonds to the satisfaction of the trial Court.

The petition is disposed of.

08-05-2008 **[Rajesh Bindal]**
MandeepKaur **Judge**

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRL REVISION NO. 1936 OF 2007

DECIDED ON : 30-10-2007

Ram Dayal & others

....Petitioners

Versus

State of Haryana

....Respondent

AND

CRL REVISION NO. 1804 OF 2007

DECIDED ON :30-10-2007

Anand

....Petitioner

Versus

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE S.S.SARON

Present: Mr.Lalit Goyal, Advocate, for Mr.Mandeep S Malik, Advocate, for the petitioners-Ram Dayal,Joginder and Vijender

Mr.T.P.Singh, Advocate, for the petitioner-Anand

Mr.Vikas Chaudhary, AAG, Haryana

S.S.SARON, J (ORAL)

This order shall dispose of Criminal Revision No. 1936 of 2007 and Crl Revision No. 1804 of 2007 as these arise out of the same

judgement and order dated 15-09-2007 passed by the learned Additional Sessions Judge, Panipat.

In terms of the said order dated 15-09-2007 passed by the learned Additional Sessions Judge,Panipat, the appeal of the petitioners Ram Dayal,Joginder and Vijender in Criminal Revision No. 1936 of 2007 and petitioner Anand in Crl Revision No. 1804 of 2007 against the judgement and order dated 19-01-2006 passed by the learned JMIC, Panipat has been dismissed.

FIR in the case was registered on 03-05-2006. On receipt of information from the Civil Hospital,Samalkha regarding admission of the injured Attar Singh,Iqbal,Bala, and Shakuntla. Head Constable Ranbir Singh went to Civil Hospital Samalkha where the doctor concerned opined that all the aforesaid injured were not fit to make the statements. On 04-05-1996,Head Constable Ranbir Singh recorded the statement of complainant-injured Attar Singh. It was *inter alia* stated that he had a pit in the pond of the village and on 03-05-1995 at about 8 am,Ram Dayal and his two sons Joginder and Naresh were digging the earth and as his wife Mam Kaur asked them not to do so, so a verbal altercation took place between Ram Dayal and Mam Kaur wife of the complainant. At about 11 am on the same date, when he along with his son Iqbal,daughter Bala and wife Mam Kaur and his brother Sumer's wife Shakuntla were present in the house, in the meanwhile, accused Ram Dayal and Anand along with other accused namely Joginder,Bijender and Naresh son of Rama Dayal arrived there having jelly,lathi,gandasi and sariya etc.in their hands and in furtherance of their common intention, they entered his house and accused Ram Dayal exhorted the other co-accused to teach the complainant and his family

members a lesson for not allowing him to dig the earth from the land. Thereafter, accused Ram Dayal inflicted a jelly blow on the hand of the complainant, accused Joginder inflicted a gandasi blow on the head of Iqbal,accused Naresh inflicted a lathi blow on the person of Shakuntla and accused Naresh also inflicted a lathi blow on the head of Bala. Their Shrieks attracted Maman and Ram Kishan to the place of occurrence,but inspite of that accused Joginder inflicted a gandasi blow on the person of the complainant on the left hand of the complainant,accused Naresh inflicted blow at his back and accused Anand inflicted a sariya blow on the mouth of the complainant and they also inflicted injuries on the person of his son Iqbal, wife Mam Kaur , daughter Bala and his brother's wife Shakuntla. With great difficulty, they were rescued from the clutches of the accused by said Maman and Ram Kishan and thereafter, all the accused went away from the place of occurrence and all the injured were brought to Civil Hospital, Samalkha for medical treatment.

On the basis of these allegations, FIR was registered under Sections 148/323/324/325/149/452 IPC . Challan in the case was filed and the learned JMIC vide his judgement and order dated 17-01-2006 found the accused Ram Dayal,Joginder,Vijender and Anand to be guilty for the offences under Sections 323/324/325/452 read with Section 34 IPC. They have been sentenced vide subsequent order dated 19-01-2006. The main sentence that has been passed against the convicts is to undergo RI for one year and a fine of Rs.500/-each for the offence under Section 325 read with Section 34 IPC. In default of payment of fine, the accused are to further undergo RI for one month. The appeal against the order has been dismissed

by the learned Additional Sessions Judge,Panipat, vide order dated 16-09-2007.

Mr.T.P.Singh,learned counsel for the petitioner-Anand and Mr.Lalit Goyal, learned counsel for petitioners Ram Dayal,Joginder and Vijender have submitted that there are as many as 10 discrepancies in the prosecution case besides the Investigating Officer Head Constable Ranbir Singh has not been examined. In the alternative, it is submitted that petitioners are the first offenders and they be considered for release on probation.

Learned State counsel has submitted that the prosecution has proved its case in all respects. It is submitted that the discrepancies pointed out by the learned counsel for the petitioners have been fully explained and considered by the learned Additional Sessions Judge besides it is submitted that non-examination of the Investigating Officer is not such a serious circumstance so as to vitiate the trial. It is also submitted that keeping in view the role attributed to the petitioners, the sentence that has been imposed is commensurate with the gravity of the offence.

I have given my thoughtful consideration to the contentions of the learned counsel for the parties.

It may be noticed that the learned Additional Sessions Judge in his impugned order dated 15-09-2007 has considered all the discrepancies which were pointed out by the defence counsel. It was observed that all the 10 contradictions that have been submitted by the defence were considered. After consideration, it was observed that the alleged contradictions by no stretch of imagination could be construed to be material. Such type of discrepancies are bound to appear in the statements of the prosecution

witnesses as they appeared in Court after passage of considerable time. They are not expected to narrate a parrot like version in the Court coupled with the fact that the cross-examination is an unequal dual between rustic and refined lawyer. In fact, these types of minor discrepancies are the hall-mark of the truthfulness and the genuineness of the prosecution version and thus on account of these aforesaid minor discrepancies, no fault can be found with the prosecution version.

After going through the orders, I find that there is no infirmity in the order passed by the learned Additional Sessions Judge. As regards the non-examination of the Investigating Officer Head Constable Ranbir Singh, it was observed that non-examination of the Investigating Officer in a hurt case is not at all fatal because first of all he is not an eye witness to the occurrence besides all the documents which had been prepared by the Investigating Officer had been duly proved by the other witnesses and thus no prejudice has been caused to the accused on account of non-examination of the Investigating Officer. There is nothing on record to show that non-examination of Head Constable Ranbir Singh had in any manner vitiated the trial of the case. Learned counsel for the petitioner-Anand has, however, submitted that the injury attributed to the said petitioner is minor in nature and even otherwise he is not shown to be a relative of the other co-accused Ram Dayal, Joginder and Vijender. In this regard, it may be appropriately noticed that the presence of Anand in the occurrence is duly established. In fact, it has come on record that Anand inflicted a sariya blow on the mouth of the complainant and Attar Singh in his deposition as PW9 has substantiated the contents of his statement recorded on 04-05-1996 which was made before Constable Ram Singh. Attar Singh has stated in his

statement Exhibit PW9/A that Anand had inflicted a saria blow on his mouth. His statement in this regard is corroborated by Iqbal,PW3, another eye witness to the occurrence. Therefore, it cannot be said that the role of Anand-petitioner in Criminal Revision No. 1804 of 2007 is in any manner less than the other convicts.The question of release on probation in the facts and circumstances of the case does not arise as it has been established that the petitioner had entered the house of the victims and caused injuries. Dr.Raj Kumar, PW2 has deposed that he examined Attar Singh and found six injuries on his person. Injuries Nos. 3 and 4 had been caused with the sharp edged weapon whereas injury No.5 has been caused with a pointed weapon. The said doctor also found 4 injuries on the person of Iqbal son of Attar Singh. Injury No.1 has been caused by sharp edged weapon whereas remaining injuries have been caused by blunt weapon. Shakuntla wife of Sumer was also examined and two injuries were found on her person. Injury No.2 was simple in nature and injury No.1 had been caused with a sharp edged weapon. The medical examination of Bala revealed that one injury had been caused on her person with a blunt weapon and was kept under observation. Dr.Sham Wadhwa, PW6 deposed that he radiologically examined Shakuntla wife of Sumer. However, no fracture was seen. The radiological examination of Bala daughter of Attar Singh showed no fracture. The radiological examination of Attar Singh showed fracture of acromiam process of left scapula. The nature of injuries that have been caused and also the injuries inflicted on women in the house of the complainant, would show that the petitioners had committed a heineous crime. All the prosecution witnesses have proved the case against the petitioners. In the circumstances, their conviction and sentenced recorded

by the learned Additional Sessions Judge, Panipat,calls for non-interference by this Court in exercise of its revisional jurisdiction.

Accordingly both the above mentioned Criminal Revisions Nos. 1804 and 1936 of 2007 are dismissed.

30-10-2007 **{S.S.Saron}**
MandeepKaur **Judge**